

REBECCA K. SMITH
Public Interest Defense Center, P.C.
P.O. Box 7584
Missoula, MT 59807
(406) 531-8133
publicdefense@gmail.com

TIMOTHY BECHTOLD
Bechtold Law Firm, PLLC
P.O. Box 7051
Missoula, MT 59807
(406) 721-1435
tim@bechtoldlaw.net

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

NATIVE ECOSYSTEMS
COUNCIL, and ALLIANCE FOR
THE WILD ROCKIES,

Plaintiffs,

vs.

FAYE KRUEGER, et al.,

Defendants.

CV-12-27-M-DLC

**DECLARATION OF
MATTHEW BISHOP**

I, Matthew Bishop, hereby state the following:

1. I am Director of the Western Environmental Law Center's (WELC's) Northern Rockies Office in Helena, Montana.
2. I am an attorney licensed to practice law and member in good

standing in Montana, New Mexico, and Oregon (inactive status). I am also admitted to practice before the United States District Court for the Districts of Colorado, Montana, and New Mexico and the United States Court of Appeals for the Ninth, Tenth, and D.C. Circuits.

3. I received my J.D. from Vermont Law School in 1998. I attended law school to exclusively study and eventually practice environmental law. While attending Vermont Law School, I took classes on administrative law, federal natural resource law, environmental law, pollution control, and watershed protection. I also participated in an environmental moot court competition, completed two independent research and writing projects on issues of environmental law, and graduated in the top 25% of my class.
4. I joined WELC's Southwest Office in Taos, New Mexico as a staff attorney in October, 1998 and moved to Helena, Montana (my hometown) in November, 2007 to open a Northern Rockies Office. I am now the Director of WELC's Northern Rockies Office and practice environmental law exclusively.
5. I have considerable experience in environmental law and litigation in both state and federal court. I have the unique experience of litigating numerous environmental cases involving a variety of environmental statutes and regulations, including but not limited to: the National Environmental Policy Act, National Forest Management Act, Clean Water Act, Endangered Species Act, Wild and Scenic Rivers Act, National Historic Preservation Act, Federal Land Policy Management Act, and §4(f) of the Department of Transportation Act.
6. I have spoken at numerous seminars on environmental law that qualify as Continuing Legal Education (CLE) for attorneys. I also testified as a legal expert on the Clean Water Act before the State of New Mexico's Water Quality Control Commission.
7. During my 14 years as an environmental attorney, I have personally prepared and litigated attorney fee applications in the federal courts. In litigating fee applications, I have become personally familiar with the common billing practices and procedures utilized by many law firms both in Montana and elsewhere. I have also conducted research in an effort to understand billing practices and procedures. I have also

discussed billing practices with law firms. I have personally received fee awards for work in U.S. District Courts and U.S. Courts of Appeal.

8. As a result of litigating cases that arise under federal environmental statutes, I have become knowledgeable of the expertise required to prosecute such cases successfully and the availability of counsel in Montana and the Ninth Circuit who possess the special expertise in litigating such cases.
9. Based on my experience, environmental litigation in an identifiable practice specialty that requires distinctive knowledge of pertinent statutes, complex regulatory schemes, scientific principles, and industrial operations.
10. I have reviewed filings from this case: *Native Ecosystems Council v. Krueger*, CV-12-27-M-DLC (D. Mont.). I am familiar with the issues raised in this case and the skill and time it takes to successfully prosecute a case like this. Plaintiffs' success required the participation of counsel possessing special expertise in federal environmental law.
11. I am personally familiar with the expertise, experience, and reputations of Tim Bechtold and Rebecca Smith. They are both experienced litigators of cases arising under federal environmental law, and they are among a small class of specialists in this type of litigation.
12. The availability of attorneys in the District of Montana and the Ninth Circuit who possess sufficient expertise in federal environmental litigation to prosecute competently a case such as this is limited.
13. The availability of such attorneys in the District of Montana and the Ninth Circuit who are willing to accept cases on behalf of environmental protection organizations rather than regulated entities is especially limited.
14. I understand that for the years in which this case was litigated, the statutory rates, adjusted for cost of living increases, in the Ninth Circuit were \$184.32 for work performed in 2012, and \$180.59 per

hour for work performed in 2011. Based on my knowledge of availability of competent counsel, no such counsel were available to Plaintiffs at those rates.

15. Competent counsel for this case and similar cases based on federal environmental laws must be drawn from among a small class of specialists who are available only at hourly rates that substantially exceed the capped rates ordinarily available under EAJA.
16. In my opinion, the number of hours expended on this case is eminently reasonable and not excessive.
17. Additionally, in my opinion, the rates requested are reasonable. The rates requested by Mr. Bechtold and Ms. Smith reflect a modest increase of approximately \$10.00/hour each year (reflecting both cost of living increases as well as additional expertise adjustment) above the rates set by the U.S. Court of Appeals for the Ninth Circuit for them, in *Hapner v. Tidwell*, 9th Cir. No. 09-35896, for work completed in 2009 and 2010. Additionally, the rates are the same as the rates awarded by this Court in *Native Ecosystems Council v. Weldon*, CV-11-99-M-DWM. In *Weldon*, this Court awarded Smith \$210/hour for work performed in 2011 and \$220/hour for work performed in 2012. This Court awarded Bechtold \$270/hour for work performed in 2011 and \$280/hour for work performed in 2012. *Native Ecosystems Council v. Weldon*, --- F.Supp.2d ----, 2013 WL 432291 (D. Mont. 2013).

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 28th Day of May, 2013.


Matthew Bishop